

TYPE III DEVELOPMENT & ENVIRONMENTAL REVIEW, STAFF REPORT & RECOMMENDATION

Form DS1402



Project Name: KRENZEL REZONE

Case Number: CPZ2004-00004; SEP2004-00128

Location: 10505 NE 285th Street

Request: The applicant is requesting to rezone an approximate 36.5-acre parcel from the R-10 zoning district to the R-5 zoning district.

Applicant: Art & Sylvia Krenzel
10505 NE 285th Street
Battle Ground, WA 98604
(360) 666-1883
E-mail: phoenix98604@earthlink.net

Contact Person: Same as applicant

Property Owner: Same as applicant

RECOMMENDATION

Deny

Team Leader's Initials: _____ **Date Issued:** October 20, 2004

Public Hearing Date: November 4, 2004

County Review Staff:

	<u>Name</u>	<u>Phone Ext.</u>	<u>E-mail Address</u>
Planner:	Josh Warner	4898	joshua.warner@clark.wa.gov
Engineer (Trans. & Stormwater):	Ken Burgstahler	4347	ken.burgstahler@clark.wa.gov
Engineer (Trans. Concurrency):	Shelley Oylear	4354	shelley.oylear@clark.wa.gov

Team Leader:	Travis Goddard	4180	travis.goddard@clark.wa.gov
Engineer Supervisor: (Trans. & Stormwater):	Richard Drinkwater, P.E.	4492	richard.drinkwater@clark.wa.gov
Engineering Supervisor: (Trans. Concurrency):	Steve Schulte P. E.	4017	steve.schulte@clark.wa.gov
Wetland Biologist:	Brent Davis	4152	brent.davis@clark.wa.gov

Comp Plan Designation: Rural Residential (R)

Parcel Number(s): 224514-000

Applicable Laws:

Clark County Code Chapter: 40.210.020 (R-5 Zoning District), 40.350 (Transportation), 40.560.020 (Zone Change), 40.570 (SEPA)

Neighborhood Association/Contact:

No recognized neighborhood association

Time Limits:

The application was determined to be fully complete on August 25, 2004 (see Exhibit 8). Therefore, the County Code requirement for issuing a decision within 92 days lapses on November 25, 2004. The State requirement for issuing a decision within 120 calendar days, lapses on December 23, 2004.

Vesting:

An application is reviewed against the subdivision, zoning, transportation, stormwater and other land development codes in effect at the time a fully complete application for preliminary approval is submitted. If a pre-application conference is required, the application shall earlier contingently vest on the date the fully complete pre-application is filed. Contingent vesting requires that a fully complete application for substantially the same proposal is filed within 180 calendar days of the date the county issues its pre-application conference report.

A pre-application conference on this matter was held on July 8, 2004. The pre-application was determined to be contingently vested as of June 16, 2004 (i.e., the date the fully complete pre-application was submitted).

The fully complete application was submitted on August 5, 2004 and determined to be fully complete on August 25, 2004. Given these facts the application is vested on June 16, 2004.

There are not any disputes regarding vesting

Public Notice:

Notice of application and public hearing was mailed to the applicant, Neighborhood Association and property owners within 500(rural) feet of the site on August 31, 2004 (Note: This site is not located within the boundaries of a recognized neighborhood association.) One sign was posted on the subject property and two within the vicinity on October 20, 2004. Notice of the SEPA Determination and public hearing was published in the "Columbian" Newspaper on October 20, 2004.

Public Comments:

No written comments were received on this application as of the issue date of this report.

Project Overview

The site is located northwest of Battle Ground on NE 285th Street near NE 112th Avenue. The site is largely forested with three Category 2 wetlands onsite. There is an existing residence and several outbuildings near the southeast corner of the property. The current zoning of the property is R-10. The properties to the north, east and south are zoned R-5. The properties to the west are zoned R-20. A 1995 zoning map shows the zoning of the subject parcel and the properties to the west as Agri-Forest 20. The properties to the north, east and south were zoned Rural Estate 5.

The applicant has requested a rezone from the existing R-10 zone to the R-5 zone.

Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use
Site	Rural	R-10	Existing Residential
North	Rural	R-5	Existing Residential/Agriculture
East	Rural	R-5	Residential/Vacant
South	Rural	R-5	Residential/Vacant
West	Rural	R-20	Residential

Staff Analysis

Staff first analyzed the proposal in light of the 16 topics from the Environmental Checklist (see list below). The purpose of this analysis was to identify any potential adverse environmental impacts that may occur without the benefit of protection found within existing ordinances.

- | | |
|---------------------------------|--|
| 1. Earth | 9. Housing |
| 2. Air | 10. Aesthetics |
| 3. Water | 11. Light and Glare |
| 4. Plants | 12. Recreation |
| 5. Animals | 13. Historic and Cultural Preservation |
| 6. Energy and Natural Resources | 14. Transportation |
| 7. Environmental Health | 15. Public Services |
| 8. Land and Shoreline Use | 16. Utilities |

Then staff reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts will be mitigated by the requirements of the code.

Staff's analysis also reflects review of agency and public comments received during the comment period, and knowledge gained through a site visit.

Major Issues:

Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposed development comply with the applicable code requirements, and, therefore, are not discussed below.

LAND USE:

Finding 1 – Rezone Criteria: In order for the rezone to be granted, the applicant must demonstrate that the approval criteria in CCC 40.560.020(H)(1)-(4) for a rezone are met. The four (4) required criteria are outlined and analyzed in the findings below.

Finding 2 – CCC 40.560.020(H)(1)

Rezone Criterion 1: *Requested zone change is consistent with the comprehensive plan map designation.*

The comprehensive plan designation for the subject parcel is Rural Residential (R). The proposed zone change from R-10 to R-5 is consistent with the comprehensive plan map designation. Therefore, staff finds that this criterion is met.

Finding 3 – CCC 40.560.020(H)(2)

Rezone Criterion 2: *The requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the zoning district.*

The comprehensive plan contains general policies for rural lands (Comprehensive Plan 4-11). However, there are no specific policies to differentiate between the R-20, R-10 and R-5 districts. Therefore, staff is forced to conclude that the zone change is consistent with the plan policies and locational criteria as the R-10 zone is currently applied.

The purpose statement for the rural districts is at CCC 40.210.020(A) states:

The rural districts are intended to provide lands for residential living in the rural area. Natural resource activities such as farming and forestry are allowed and encouraged in conjunction with the residential uses in the area. These areas are subject to normal and accepted forestry and farming

Because there is no differentiation between the three rural districts (R-20, R-10 and R-5), staff concludes that the proposed zone change is consistent with the purpose statement.

Finding 4 – CCC 40.560.020(H)(3)

Rezone Criterion 3: *The zone change either:*

a. Responds to a substantial change in conditions applicable to the area within which the subject property lies;

As was stated in the narrative from the applicant, the subject property was rezoned from the Agri-Forest 20 zone to the R-10 designation in 1997. The applicant owned the property at that time. That zone change would have changed the property from having one possible lot to three possible lots today.

The only change that is cited by the applicant is that Clark County adopted the Rural Cluster Development provisions (CCC 40.210.020(D)). This, the applicant claims, is a “significant change” that should justify a zone change to the R-5 district. Staff disagrees that this is a “significant change”. The purpose of the Rural Cluster states that:

...this section is to provide for small lot residential development in the rural zoning districts (R-5, R-10 and R-20) which maintains rural character, maintains and conserves larger remainder parcels, protects and/or enhances sensitive environmental and wildlife habitat areas, and minimizes impacts to necessary public services. These goals are achieved by allowing the placement of homes on a small portion of the property while maintaining the majority of the site in a remainder parcel. This is consistent with the goals and policies of the Growth Management Act, especially the provisions for innovative development techniques to conserve open space and resource lands.

While the provisions are a change in how development may take place, it does not represent a “significant change in conditions” since the R-10 zoning was implemented.

As stated in the purpose statement above, the cluster provisions apply to the R-5, R-10 and R-20 districts. If this was seen as a “significant change in conditions” in this case then all lands that are zoned R-10 and R-20 could be rezoned to R-5 simply because of the cluster provisions. This would have the potential impact of frustrating all of the rural zoning in the county. Staff might consider a “significant change in conditions” to included issues such as public water or sewer service becoming available; changes in density requirements; or, new public infrastructure improvements. The applicant is able to take advantage of the cluster provision with the current zoning on the property.

b. Better implements applicable comprehensive plan policies than the current map designation; or

The applicant does not make an argument that a zone change from R-10 to R-5 would better implement the comprehensive plan.

c. Corrects an obvious mapping error.

The applicant does not make an argument that a zone change from R-10 to R-5 would correct an obvious mapping error.

Staff finds that this application does not meet this criterion.

Finding 5 – CCC 40.560.020(H)(4)

Rezone Criterion 4: There are adequate public facilities and services to serve the requested zone change.

If the property was rezoned from R-10 to R-5 the parcel may be able to be divided into seven (7) new lots compared to three (3) under the current zoning. Therefore, there would be a possible net increase of four (4) additional lots. It is unlikely that these additional lots would be accessed from NE 285th Street, a private road. The impact on NE 112th Avenue would be minimal and the facilities are adequate. Emergency services would also be marginally impacted, but would be adequate.

Any newly developed lots on the subject property would be served by onsite sewage systems and water wells and would not have an impact of public facilities. Therefore, staff finds that this criterion is met.

Because all of the criteria in CCC 40.560.020(H) must be met, and staff finds that criterion (3) is not met, staff recommends that the application be **denied**.

RECOMMENDATION

Based upon the findings and conclusions stated above, staff recommends the Hearings Examiner **DENY** this request.

SEPA DETERMINATION

As lead agency under the State Environmental Policy Act (SEPA) Rules [Chapter 197-11, Washington Administrative Code (WAC)], Clark County must determine if there are possible significant adverse environmental impacts associated with this proposal. The options include the following:

- **DS = Determination of Significance** (The impacts cannot be mitigated through conditions of approval and, therefore, requiring the preparation of an Environmental Impact Statement (EIS);
- **MDNS = Mitigated Determination of Non-Significance** (The impacts can be addressed through conditions of approval), or;
- **DNS = Determination of Non-Significance** (The impacts can be addressed by applying the County Code).

Determination:

Determination of Non-Significance (DNS). Clark County, as lead agency for review of this proposal, has determined that this proposal does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (e). This decision was made after review of a completed environmental checklist and other information on file with the County.

Date of Publication & Comment Period:

Publication date of this DNS is October 20, 2004 and is issued under WAC 197-11-340. The lead agency will not act on this proposal until the close of the 14-day comment period, which ends on November 3, 2004.

Public Comment Deadline:
November 3, 2004

SEPA Appeal Process:

An **appeal** of this SEPA determination and any required mitigation must be filed with the Department of Community Development within fourteen (14) calendar days from the date of this notice. The SEPA appeal fee is **\$186**.

A **procedural appeal** is an appeal of the determination (i.e., determination of significance, determination of non-significance, or mitigated determination of non-significance). A **substantive appeal** is an appeal of the conditions required to mitigate for probable significant issues not adequately addressed by existing County Code or other law.

Issues of compliance with existing approval standards and criteria can still be addressed in the public hearing without an appeal of this SEPA determination.

Both the **procedural and substantive appeals** must be filed within fourteen (14) calendar days of this determination. Such appeals will be considered in the scheduled public hearing and decided by the Hearing Examiner in a subsequent written decision.

Appeals must be in writing and contain the following information:

1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030(H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;
3. A brief statement describing why the SEPA determination is in error.

The decision of the Hearing Examiner on any SEPA procedural appeal can not be appealed to the Board of County Commissioners, but must pursue judicial review.

Staff Contact Person: Josh Warner, (360) 397-2375, ext. 4898.
Travis Goddard, (360) 397-2375, ext. 4180

Responsible Official: Michael V. Butts

Public Service Center
Department of Community Development
1300 Franklin Street
P.O. Box 9810
Vancouver, WA 98666-9810
Phone: (360) 397-2375; Fax: (360) 397-2011
Web Page at: <http://www.co.clark.wa.us>

Note: Any additional information submitted by the applicant within fourteen (14) calendar days prior to or after issuance of this report, may not be considered due to time constraints. In order for such

additional information to be considered, the applicant may be required to request a hearing extension and pay half the original review fee with a maximum fee of \$5,000.

HEARING EXAMINER DECISION AND APPEAL PROCESS

This report to the Hearing Examiner is a recommendation from the Development Services Division of Clark County, Washington.

The Examiner may adopt, modify or reject this recommendation. The Examiner will render a decision within 14 calendar days of closing the public hearing. The County will mail a copy of the decision to the applicant and neighborhood association within 7 days of receipt from the Hearing Examiner. All parties of record will receive a notice of the final decision within 7 days of receipt from the Hearing Examiner.

An **appeal** of any aspect of the Hearing Examiner's decision, except the SEPA determination (i.e., procedural issues), may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The appeal shall be filed with the Board of County Commissioners, Public Service Center, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030(H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,
4. A check in the amount of **\$279** (made payable to the Clark County Board of County Commissioners).

Attachments:

- Copy of SEPA Checklist
- Copy of Vicinity Map
- Copy of Proposed Preliminary Plan
- Exhibit List

A copy of the approved preliminary plan, SEPA Checklist and Clark County Code are available for review at:

**Public Service Center
Department of Community Development
1300 Franklin Street
P.O. Box 9810
Vancouver, WA. 98666-9810
Phone: (360) 397-2375; Fax: (360) 397-2011**

A copy of the Clark County Code is also available on our Web Page at:
Web Page at: <http://www.clark.wa.gov>